

## OFCCP Announces Section 503 Best Practices and Other Initiatives During Tech Sector Town Halls

Ogletree  
Deakins

Employers & Lawyers. Working Together

Article By

[T. Scott Kelly](#)

[Ogletree, Deakins, Nash, Smoak & Stewart, P.C.](#)

- [Government Contracts, Maritime & Military Law](#)
- [All Federal](#)

Monday, March 4, 2019

The Office of Federal Contract Compliance Programs (OFCCP) recently held two town-hall meetings to discuss compliance issues relevant to federal contractors and subcontractors in the technology sector. The first of these events, which the OFCCP touts as aimed at providing “better and more targeted compliance assistance,” was held in San Jose, California on February 26, 2019, with another held in Seattle, Washington on February 28, 2019. According to OFCCP, “[t]hese events provide the contractor community, interested stakeholders, and the general public an opportunity to be heard and express valuable opinions on how OFCCP can help contractors achieve compliance.” Here are some highlights from these town hall meetings.

During the San Jose meeting, Director Craig Leen assured attendees that it is not targeting or singling out the technology industry for review—despite high-profile litigation OFCCP has brought against several tech giants. Attendees of the San Jose tech hall expressed concerns over how OFCCP organizes pay data for analysis, citing wide variances in job titles and duties in the technology industry. Leen defended OFCCP’s practice, stating that grouping job titles gives the agency a reliable

comparison and that “[o]therwise, no one’s really looking at pay across the company in any meaningful way.”

In Seattle, Leen opened the town hall by addressing many misconceptions about the current administration and recommending that contractors “check your assumptions at the door.” He touted the agency’s recoveries of over \$44 million in monetary relief for victims of discrimination in fiscal year (FY\_ 2017 and 2018 as proof of the agency’s success. Leen noted these recoveries were more than double those made during the prior two years when OFCCP operated under active case enforcement (ACE), which he criticized as ineffective for ferreting out discrimination in the workplace. While promoting goals of consistency, efficiency, transparency, and certainty, Leen made it abundantly clear that if OFCCP detects issues that it cannot resolve with contractors then the agency will proceed to enforcement on an expedited basis.

## **Section 503 Focused Reviews**

Much of the discussion during the Seattle town hall concerned Section 503 focused reviews, which are set to begin in a few months. Leen spoke passionately about the need for greater inclusion in the workplace for individuals with disabilities and noted that individuals with disabilities face significant obstacles in the workforce. He cited a wage gap of 20 percent for individuals with disabilities, an unemployment rate for individuals with disabilities that is nearly double the rate for those in the general population without disabilities, and the fact that individuals with disabilities have a labor force participation rate of approximately 20 percent compared to 68 percent of those without disabilities. OFCCP has included 500 contractors’ corporate headquarter locations on its [courtesy scheduling announcement list, which will be published in mid-to-late March](#). Those identified for Section 503 focused reviews can expect mandatory on-site visits to include OFCCP’s interviews of Chief Human Resource Officers, Chief Diversity Officers, and employees that have identified as an individual with a disability.

## **Section 503 Focused Review Best Practices**

Leen also announced the following eight best practices for Section 503 compliance:

### **1. Maintain a Centralized Reasonable Accommodation System.**

OFCCP stated a centralized process for reasonable accommodations would ensure fairness across an organization and would leave decisions to those that were properly trained to make them instead of a decentralized approach that organizations might apply inconsistently. OFCCP stated that most reasonable accommodations were “free” and the median cost of a reasonable accommodation was \$500. By centralizing the decision-making for reasonable accommodations, an organization could make more informed decisions regarding the financial costs associated with requests instead of leaving these decisions to managers who are not trained to make legal judgments.

### **2. Ensure That Top Leadership Endorses and Supports Disability Inclusion Through Video and Correspondence.**

Leen cited to the agency's own [video](#) on OFCCP's website discussing the importance of disability inclusion and compliance. OFCCP recommends that CEOs and other company leadership take similar actions to create an inclusive workplace.

### **3. Coordinate with State and Local Rehabilitation Agencies.**

Leen noted that partnering with these local and state agencies is one excellent way to demonstrate good faith and touted the ease involved in coordinating with these agencies.

### **4. Provide Accessible Online Recruiting Tools.**

Leen noted that these were required by the regulations but that many contractors are not aware of these requirements and do not invest in these tools.

### **5. Provide a Comprehensive and Welcoming Self-Identification Program.**

### **6. Sponsor Disability Inclusion Programs in the Workplace.**

Leen gave examples of an Autism at Work program and the effect of an organization communicating the importance of having individuals with disabilities in the workplace by citing the value provided and contributions made.

### **7. Employee Resources Groups.**

OFCCP noted that having employee resource groups allowed more support for individuals with disabilities.

### **8. Chief Diversity/Accessibility Officer (or perhaps an ADA Coordinator).**

## **New Disability Compliance Resources**

In addition, at the Seattle meeting, Tina Williams, OFCCP's Deputy Director, Division of Program Operations (DPO), announced that OFCCP intends to launch a landing page on OFCCP's website (possibly as early as the week of March 4, 2019) listing disability compliance resources, including OFCCP and Office of Disability Employment Policy (ODEP) contacts, a list of disability inclusion best practices, documents outlining what contractors could expect during a Section 503 Focused Review, including what types of questions OFCCP will ask on-site, and other useful resources. Williams indicated that the Section 503 Focused Reviews were not intended to produce "gotcha" moments or to be punitive in nature, but rather will drive cultural change to increase disability inclusion culture in workplaces.

## **Disability Self-Identification Forms**

When addressing concerns raised about OFCCP's disability self-identification form (CC-305), Leen stated that that "form should not take precedence on substance" and noted that the agency has relaxed earlier requirements so now contractors are allowed to make some non-substantive adjustments to the form to align with company branding. OFCCP directed attendees to review its list of frequently asked questions on this area. The agency also noted that it has submitted proposed

changes to the form for Office of Management and Budget that are awaiting approval and encouraged contractors to include other information during the self-identification process (such as statements regarding a company's commitment to disability compliance and disability resource groups) to bolster self-identification response rates.

OFCCP indicated contractors could expect changes to the disability self-identification form to include links to OFCCP's definitions of words used on the form, such as a link to a definition of "disability." Evidence that OFCCP is seeking to make changes to the self-identification form comes from a recent request from the National Industry Liaison Group (NILG) for its members to participate in a disability self-identification survey that OFCCP and ODEP have approved, seeking feedback of contractor's experiences with the disability self-identification process. The request from NILG indicates the survey responses "will be shared with the OFCCP to help them establish compliance metrics that are relevant, attainable, measurable and sustainable." Contractors should stay tuned for more developments on potential changes to the disability self-identification form.

## **Additional Themes**

While a significant portion of the town hall meeting in Seattle focused on Section 503 issues, OFCCP also discussed its intention to conduct VEVRAA focused reviews and eventually sometime in FY2020 to start focused reviews of [Executive Order 11246](#) compliance, paying particular attention to the wage gap and promotion opportunities available to women and minorities. Leen also referenced an intention to focus on the legal sector, citing the low number of minority and female partners in law firms compared to associates and law school graduates. Leen also discussed his intention for increased scrutiny of promotion activity in an effort to crack the "glass ceiling." San Jose attendees reported a similar promotion discussion during that meeting.

Noting that it does not have a one-size-fits-all approach for analyzing compensation, Leen announced that OFCCP intends to provide specific guidance on how to form pay analysis groups for different industries/sectors. The hope is that the tailored examples for different industries will assist contractors in conducting their own compensation analyses.

### **OFCCP has planned several more town hall meetings in the coming months as follows:**

- Legal & Financial Industry; New York, New York, Date TBD
- Native American Outreach TBD
- Vietnam Era Veterans' Readjustment Assistance Act; Washington, D.C., Date TBD

© 2019, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

**Source URL:** <https://www.natlawreview.com/article/ofccp-announces-section-503-best-practices-and-other-initiatives-during-tech-sector>

